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FAIR, DEMOCRATIC, AND RESPONSIBLE POLICIES ON THE BALANCE BETWEEN CENTRAL AND REGIONAL FINANCIAL

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Abstract

Financial balance between central and local government according to General Provisions of Law No. 33 of 2004 on Fiscal Balance between Central and Local Government is a fair, proportional, democratic, transparent and accountable financial sharing system in order to fund the implementation of decentralization, taking into account the potential, conditions and needs of the region. The financial balance must show that the submission of municipal government affairs reflects a balance with the transfer of management and utilization of local financial resources. The policy of financial equilibrium or emphasized on four main objectives, namely: (a) to provide resources for autonomous regions to carry out the assigned tasks that are their responsibility; (b) reducing the fiscal gap between central and local governments, and between local governments, (c) improving welfare and public services and reducing welfare gaps and inter-regional public services; and (d) improve the efficiency, effectiveness and accountability of local resource management, particularly financial resources.

Keywords: *fair, democratic, and responsible policies, central and regional financial balance*

I. INTRODUCTION

Balancing fund are the fund sourced from State Budget revenue allocated to regions to finance regional needs in the context of decentralization implementation, consisting of Revenue Sharing Fund, General Allocation Fund, and Special Allocation Fund. Balancing Fund is intended to: a) assist the region in funding its authority; b) reducing the inequality of government funding sources between the central and regional governments; and c) reducing the inter-regional government funding gap.

In the context of the balance-of-finance arrangement between the Central and Regional Government, Constitution No. 33/2004 does not specify in detail what is meant by 'fair, proportional, democratic, transparent and accountable' financial sharing system, a more ordered, measurable, and measurable law of such just, proportionate, democratic, transparent and accountable principles.

Based on the fact/legal evidence (empirical evidence) in the current financial balance between Centre and Regions, from the principle of four principles that is fair, proportional, democratic, transparent and responsible, the main problem or central issue (main issue, cause prima) lies in the Fair Principle or Justice which is presumably still neglected and neglected. Why, because in the principle of justice is substantive, and basically coherence in it the principle of proportionality. Furthermore, the democratic principle, contained in it is the principle of transparency, it is actually fair in terms of the process of determining the policy of financial balance between the Central and regional governments that should involve multi-stakeholders, multi-sector, and multi-disciplinary. The principle of responsibility is meaningful just because embedded in it there is responsibility, accountability, and liability.

In this paper, we will further elaborate what is considered with the Just or Fair Principles, Democratic Principles, and Responsible Principles in the context of the policy of Fiscal Balance between the Central and Regional Governments.

A. Principle of Justice

The purpose of the law cannot be separated from the ultimate goal of state and community life that cannot be separated from the values and philosophy of life of society itself that is justice (*rechtsvaardigheid* or justice). Thus, the existence of the law is a means to realize the happiness and welfare of the inner and outer life in a common life.

Through and with the law, the Government and society can live life and life worthy and dignified. Thus in every life of government always required the existence of law no matter how simple. Therefore for Indonesia it can be ensured that development in all fields always requires a legal order and legislation that is able to meet various demands of society and the times. To answer those needs, the law that can play is a regular law and without suppressing the human dignity of every citizen. Or in other words required is the law that always serve the interests of justice, order, order, and peace in order to support the realization of a society that is physically and evenly born.

The law must contain justice for everyone. Understanding justice is not easy. Justice is interpreted so diverse, a word that is very vague, loaded with various meanings, and not so easy to digest it.¹ Ulpianus says justice is a continual willingness to give everyone what they ought to have. Aristotle defines justice by giving a person what is his right (due) or something that belongs to him. According to Hart, justice and morality are as coexistent, although the facts speak that justice is a separate part of morality. Whereas David Hume states that justice is the order in which material goods (ownership / prosperity) are addressed to individuals, and the morality of justice is seen by respecting the possession without taking the actions of obtaining the goods of persons acquired unlawfully and returned to the owner.

In contrast to Helbert Spencer, it is the strongest that must take precedence and be entitled to justice, for those who are entitled to justice are the first to have productive values and prosperity. As a survivalist of the fittest (it is the strong species that can sustain its survival) according to Herbert Spencer, unproductive members of society, to be placed in the lowest position.²

John Rawls says justice is fairness, where the need for justice is formalized through the constitution and/or law as the basis for the exercise of the rights and duties of each individual in social intercourse. Such formal justice requires minimum equality for all communities.³ In justice, according to John Rawls, it takes three moral demands, such as: firstly, the freedom to self-determination, as well as independence to others; second, the importance of equitable distribution of all opportunities, roles, positions, and the basic social benefits or values of society; and thirdly, the demands of a fair distribution of freedom and duty.⁴

Furthermore, according to John Rawls, everyone has the right to enjoy the same values and social resources, but at the same time has an obligation to create possibilities that bring benefits to society as a whole. There are three kinds of human right and obligation of each member of society namely, unity, justice in the economic arrangement; second, the arrangement of basic social systems, and thirdly, the contribution of justice between generations.⁵

Thus the existence of law is a means to realize the happiness and welfare of inner life in the life of others. Some opinions or theories can be presented with regard to the purpose and function of this law, at least there are two classified theory that deserves to be listened, namely Ethical Theory and Utility Theory, while other theories are only a variant or a combination of these two theories. Ethical Theory, pioneered by Aristotle, argues that the goal of law is to bring about justice (*rechtsvaardigheid* or justice) both distributive justice and commutative justice. While Utility Theory emphasizes that the purpose of law is to realize what is useful or useful (*doelmatig*) for many people, namely to realize happiness as much as possible for as many people as possible. The pioneer of this theory is Jeremy Bentham.

Based on these notions of justice, it can be concluded that justice is a demand of something essential of each individual as his rights that should not be violated/prevented and guaranteed through a legal formula containing the rights and obligations in the administration of government and social interaction. Justice can be transformed through the various interests of physical life, economic, social, political, cultural, religious, and spirituality.

Although some progress has been made in the field of law, there are still many legal products that are not in line with each other. In addition, there are still legal products that are not in accordance with the development of the circumstances that cause resistance in its application. Yet it has been agreed in full and unanimously by the entire Indonesian people that the fundamental norms in the Preamble of the 1945 Constitution must be really reflected in the law to be built and applied, so that the law that was built cannot be a slight deviation, bias, deviation, contradiction with the values contained in the Preamble to the 1945 Constitution. Thus, the content of the Preamble of the 1945 Constitution should be the basis, reference, standard, guideline and also the main legal

1) Hari Chand, *Modern Jurisprudence*, International Law Book Service, Kuala Lumpur, 1994, p. 225.

2) Id.

3) John Rawls, *A Theory of Justice*, The President and Fellowship of Harvard University Press Cambridge, Massachusetts, New York, 1999, p. 22.

4) Id, p. 95.

5) Andre Ata, *Keadilan dan Demokrasi, Telaah Filsafat Politik John Rawls*, Kanisius, Yogyakarta, 2001, p.131.

source for the building of National law. In the Preamble to the 1945 Constitution contains the *Pancasila* (The Five Principles) (State of the Congregation), the basic principles of human rights, justice (the State of Law), the sovereignty of the people (Democratic State), as well as the duties and obligations of the Government (all state institutions) to realize the State Welfare. The starting point of the prosperous law comes from the opening of the 1945 Constitution then from Article 27, 33 and Article 34 of the 1945 Constitution. From the Articles it can be concluded that Indonesia is a welfare state.

Law is a means of renewal and development of society. The law is not only the norm but also the principles, institutions and processes. The welfare state is a country that must actively create the welfare of society. History in some countries, especially in Western Europe and Northern Europe on the welfare state that in the first priority regulation is poverty reduction, employment, health systems, education and universal social security.

In the Welfare State it is demanded the principle of equity. The most important financial relation to note is what the Central Government is burdening in carrying out the responsibilities of governance which are the duties and obligations of the Central Government, and what is charged to local governments as the responsibility for governing and managing local governments. The financial balance does not mean that the provision of financial resources between the Centre and the regions within the unitary state is essentially a subsidy of the Central to the regions.

The State Budget is a manifestation of state financial management as an instrument for the Government to regulate state expenditures and revenues in order to finance the implementation of government and development activities, achieve economic growth, increase national income, achieve economic stability, and determine direction and development priorities in general.

The local government must also have the ability to determine objectively the financial needs necessary to finance the provision and provide services required by the local community. This means that local governments must be able to carry out a rational and rational calculation of the various activities that will be implemented in relation to the transfer of government affairs to the region. Based on the activity plan, the local government must be able to determine precisely and objectively financing plan of each activity, so that will know the required financial requirement in one budget year.

The central government should be able to provide fair and measured subsidies to each region to finance underfunding, meaning that the central government should carefully look at the objective conditions of a region, so that in determining the amount of subsidy should be based on considerations acceptable to the recipient region.

In order to eliminate the assumption that people with natural resource potential often complain about, that the balancing funds generated from the general allocation funds are to the detriment of them, the central government must do so as much as possible involving the components of the local community.

Over the last few years the amount of balancing funds allocated to the regions has continued to increase. Nevertheless, the government acknowledges that transfers to regions in reducing vertical inequality between central and local governments through Revenue Sharing Fund and minimizing fiscal disparities across regions through General Allocation Fund (hereinafter abbreviated GAF) and Special Allocation Fund (abbreviated SAF) still face considerable challenges with the allocation of certain adjustment funds not yet fully based on formulas and criteria. The government must continue to reformulate the balancing fund policy every year, so it is expected to support the needs of development funding, especially for marginal areas. If we look at the composition of each region's revenue source (district/city), this balance fund has a very vital role.

In the last five years, the proportion of equalization funds to total regional revenues nationally reached an average of 73%. From these figures it is clear that the regions are still dependent on the balancing funds to carry out their various development programs and activities. As it is the largest component in the allocation of transfers to regions, balancing funds have a very important role for regional finance, especially in supporting the implementation of fiscal decentralization and regional autonomy. The government continues to make continuous improvement on the mechanism of channelling transfers to the regions.

Change in the way of distribution of funding from the central government to regions with the formula of GAF has caused some problems namely the difference of perception between the central government and local government regarding the purpose of GAF, the central government sees that GAF as one of the mechanism of equitable financial capacity between the Central and regions in accordance with the mandate of the Fiscal Balance Act between the Central and Regional Government, while on the other hand the local government sees it as a primary tool to support the provision of funds in the implementation of government and development programs as set out in the Regional Budget. This creates a lack of linkage in the use of GAF between the Central and local governments. Unfairness in the distribution of GAF in addition to areas that lack the allocation of GAF allocation, it turns out that in practice there are some areas that actually experience the excess of GAF.

The existence of such distinctions results in a gap between resource-rich and resource-rich regions. Areas

with natural wealth tend to have few inhabitants. Thus, what they provide for the Centre is much larger than the populated areas plus the level of public awareness in paying a much higher tax (administrative order). So if the written law as a balance, in theory it is not appropriate because of the central intervention in the management of Locally-Generated Revenue itself which is even unfair and precisely generate dependence of autonomous regions to the Central Government in terms of meeting regional needs.

The fact that most autonomous regions in Indonesia are still not ready to assume the concept of balance because in terms of financial ability, they have not been able to meet the accepted autonomy. In addition, from a social point of view, when the area is truly autonomous, the consequence is that there is considerable authority or power for the region, thus potentially causing discrimination and ending in conflict. In addition, autonomous regions with high capabilities have the responsibility to provide subsidies to other regions that are less capable of generating equity. In relation to the economy (welfare) must reject justice based on the market, because the measure is not just equity-based equity. The principle of justice must be fairness and determined through a joint consensus achieved from the equal bargaining process, equal bargaining (Jhon Rawls 1978) as stated in the 1945 Constitution all citizens have equal status in law and government, and Article 33 of the 1945 Constitution.

Another thing that contributes to the desire to create a financial balance between the Central and Regional Justice is due to the prolonged economic crisis. The root of this problem is allegedly due to the loss of public confidence in the government (not performing government). With the occurrence of this crisis of confidence, whatever is disclosed and declared by the government is regarded as lip service by the people. All the moves have been tried, all methods have been applied, and all the economists have given their best concoction. However, none of them succeeded in healing this because all the efforts were just busy on the surface, not touching at the heart of the problem.

The most appropriate therapy to eliminate the crisis of confidence is to re-establish the extend credibility of the people in their government. This requires the government's ability to provide answers to the "trust" that the people have given (performing government). The government needs to show its high commitment to its alignment to the people, not just a statement without realization. This is what we mean in the development of accountability of the performance of government agencies to implement the policy of financial balance between the Central and Regional justice.

When development is given meaning as a dynamic process, it must also be oriented towards an endeavour toward a better level of welfare and justice. This is in the theory of development strategy known as development or equitable growth.⁶ Even to cultivate and develop the moral values of development, within certain limits agreed upon by Yusuf Qardhowi it can be said that in order to realize true truth and justice, any way is permissible.

B. Democratic Principles

The interconnectedness and interdependence between law and democracy illustrates that law as a whole can be seen as a merging of social morality/justice, to which individuals, groups or governmental organizations must constantly orient their behaviour. Since the demands of society can be very different from those of the lawmakers, we should expect that conceptions of the noble values of social, political, economic, and especially legal reasoning -as stated in the spirit of the law-must be realized in the life of democracy. However, in reality, it should be cautioned because there is frequent smuggling of evil interest which is poured into the substance of local law or regulation, so that appear on the material legislation looks from outside valid and valid, but seen in terms of substance very immoral.

Community involvement in policy making either directly or indirectly through representative institutions that can channel their aspirations. Participation is built on the basis of social freedom and speaks and participates constructively.

The meaning of transparency in the formation of policies will support the ciliate and legitimacy of the policy itself, because:

1. Every person is the bearer of rights and the bearer as well as the right bearer, the participation or participation in the development by itself is the right of everyone:
 - a) Right of information
 - b) Right of thinking
 - c) Right of expressing opinions
- 6) Anyone calls as "Growth with Distributive Justice", the justice in question in the form of focus attention on social aspects in development, check, Mustopaadidjaja, A. R. Problems of the Indonesian Framework for Approach and Pattern of Development, in Bintoro Tjokroam-idjojo, Theory and Strategy of National Development, Haji Masagung, Jakarta, 1988, p. 66

- d) Right of influencing public decision-making process
- e) Right of supervising the course of the policy.
- 2. The principle of transparency and openness requires that all policies to be taken by the authorities/ government must be known and based on the real condition of the people/society and the Region;
- 3. Increasing public prosperity not only needs to be supported by resources in the form of capital and technology, but also information.
- 4. Increased policymakers' responsibility to the people so that control of politicians and bureaucrats will work more effectively; d. Allows the functioning of checks and balances so as to prevent a monopoly of power by bureaucrats;
- 5. Reduce the number of corruption cases;
- 6. Improve efficiency in the delivery of public services; g. reinforces the balance point in the management of natural resources between utilization and conservation.
- 7. Strengthen community support through cooperation and partnerships between communities and government/authority in planning, implementing and supervising a development program.
- 8. Improve people's willingness to accept decisions.

C. Principle of Responsibility

The need for fair leaders is absolute, but it will be less effective if it is not supported by other professional or semi-professional or amateur educated government apparatuses, produced through formal and non-formal education programs. But at least the responsible official in addition to having the nature of honest, smart, professional, also has the ability to at least capable:

- 1) Know exactly the scope of duties and authority it has;
- 2) Fully appreciate its overall role, responsibilities and obligations;
- 3) Have a strong awareness and will about the need to establish coordination and cooperation between the apparatus and the public / private sector in order to avoid or minimize obstacles in the implementation of government duties carefully, accurately and quickly;
- 4) Know exactly what the problem is, who does it, the time when, where, and how it works.
- 5) Able to find alternative solutions to the problem in a rational, clear and sharp.

In the context of this legal and power relationship, a very popular slogan ever expressed by Blaise Pascal (1941) states "Justice without might is helpless; might without justice is tyrannical ". Justice without power is powerless, and power without justice is tyranny. From this statement it is clear that the law requires coercion for the adherence of its provisions, then it can be said that law requires power for its enforcement. Without power, law is a collection of social rules that only serve as an appeal or a mere suggestion. Thus based on logical thinking it can be stated that power is a function of a law-abiding society.

The power that exists on the government is basically bad and not bad either, depending on the owner of power itself. However, because the properties and nature of power tend to be perverted (according to Lord Acton: power tends to corrupt, but absolute power corrupts absolutely), there needs to be limits. That's why an effective law is needed as a regulator (read: limits) of power. A holder of power must have a spirit of serving the public interest (sense of public service). This is the essence of the notion that power (government) must be subject to the law.

The effectiveness of the process of using power that is subject to the law will ultimately be a performance appraisal for government officials and agencies. Therefore, in order for law norms to run effectively and efficiently, the law must protect people passively (negatively) by preventing arbitrary actions, and actively (positively) by creating societal conditions that enable the social process to take place naturally and nurturing, so that every human being has a wide and equal opportunity to develop his full human potential.

Complementing the legal relationship, power and leadership as described above, in the context of governance, it is necessary to implement the governance system consistently and consistently in the administration because in Good Government Governance (GGG) there is attitude and noble character and noble character for those who carry it. The basic characteristics of good or decent governance are among others:

- 1) clean and open government;
- 2) honest, trustworthy and trustworthy;
- 3) treat equally to every citizen (not discriminative);

- 4) not to impose the will of the people, for no logical reason;
- 5) open to criticism and public opinion, and respect differences of opinion among leaders and society;
- 6) open access to information to everyone;
- 7) serve the community in accordance with their needs and interests proportionally, reasonably and reasonably;
- 8) thinking, speaking and acting rationally, argumentatively, and not lying;
- 9) prioritize the interests of the people rather than officials;
- 10) act carefully, carefully and thoroughly, by considering the various related aspects;
- 11) use resources effectively and efficiently;
- 12) appreciate and respect diversity in its various aspects.

In relation to the principle of responsibility in the financial balance between the central and regional levels, it is necessary to pay close attention to the needs of the Region, at least in relation to the issues surrounding security and social protection both regarding social security net programs, social protection programs social protection, social and defence security, socio-political security, and political security issues have been widely discussed and even a number of seminars have discussed each aspect in depth. However, in-depth discussion of all security issues in terms of the dynamics of local politics seems to have never been done.

There are seven issues in the region that need to be elaborated as follows:

1) Social Security Net

A number of issues surround the security associated with the safety of the (economic) life of the poor when they are facing uncertain economic developments.

2) Social Protection

The main problems faced by people who are often considered poor are the limited capital and the weakness of its human resources. A number of programs to provide social protection for them have been widely implemented, such as Independent National Community Development Program, the Education Support Program (School Operational Fund), and other social assistance programs. The problem is when there is an uncertain economic development, or there is a natural disaster, or when the programs are forced to stop because of limited funds.

3) Food Security

Food is a commodity that should be adequately provided by the state and the people, but in fact food is often scarce for certain regions and for certain folk groups. The presence of pest attacks, the presence of natural disasters, political unrest, and the economic game of a certain elite may cause food to be unavailable. Effort of providing food protection both by the providing adequate and quality food and by developing food-type diversification is worthy.

4) Bio Security

In other countries (e.g. Australia) the problem of bio security is already a national program and it has been realized by the community how important it is to maintain biological endurance. A number of policies and actions have been and are always being done to protect the biodiversity of the region. In Indonesia the problem of biological endurance not only has not been seriously cultivated but public awareness of the importance of biological endurance seems to be far away. Even by both conscious and unconscious, many entrepreneurs and communities that destroy biota in Indonesia. Often also interfered with the theft of *nuftah* plasma and then sold abroad

5) Social and defend Security

The inequality of development in Indonesia can occur due to discriminatory policies. Usually the ruling and capitalized community groups will acquire larger development cakes, while the impoverished poor usually have less development. Moreover, the unevenness of development also occurs due to policy discrimination concerning the location of the region. Fringe areas, border areas and remote areas often lack development priorities. Though the periphery and especially the border region precisely the spearhead to maintain the integrity of the country and the honour of the nation. A number of cases of injustice and inequality of development occurred in the region.

6) Socio-Political Security

Indonesia has been known internationally as a country capable of systematically capturing terrorist groups. However, such a condition can not directly improve the sense of security for the community. Conversely, feelings of anxiety if there is terrorism are even greater. Similarly, there are slogans that the political and religious elite are proclaiming that the state of Indonesia is a *Bhineka Tunggal Ika* country that respects differences that do not automatically increase the sense of security for minority groups (tribes, religions, or groups). The existence of policies that are discriminatory, rampant non-violence against minorities will obviously spur the sense of insecurity for the citizens of Indonesia.

7) Political Security

The latter topic concerns a sense of security for citizens who have the right to protection, the right to politics, and the right to become civil society. The 1945 Constitution actually has guaranteed all the rights for all citizens. But in practice not all of these guarantees are implemented. Even the effort to acquire those rights is often blocked and can even be considered as opposed to the state.

II. CONCLUSION

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